

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RAHSON STAPLES, : Case No. 1:17-cv-742
: :
Plaintiff, : Judge Timothy S. Black
: Magistrate Judge Karen L. Litkovitz
vs. : :
: :
CODEY JUILLERAT, *et al.*, : :
: :
Defendants. : :
:

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 6)**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on January 8, 2018, submitted a Report and Recommendation. (Doc. 6). Defendants Duane Weyand, Neil Rager, Joshua Riley, Jerry Popp, and Codey Juillerat filed objections to the Report and Recommendation on March 7, 2018. (Doc. 12).

Defendants' objections are not well-taken at this time. The Magistrate Judge's Report and Recommendation recommends a *sua sponte* dismissal of several of Plaintiff's claims for failure to state a claim, and was filed before any Defendants had responded to the complaint. (Doc. 6). Defendants' objections request that the Court take judicial notice of several previously unfiled documents to overrule the Magistrate Judge's recommendations. (*See* Doc. 12). Those documents were attached to Defendants' objections. (Docs. 12-1; 12-2; 12-3).

Defendants then filed a motion to dismiss the complaint one week after filing objections to the Report and Recommendation. (Doc. 14). This currently pending motion raised identical arguments as the objections to the Report and Recommendation, merely copying the document. However, the motion to dismiss also has the benefit of a response from Plaintiff (Doc. 17), a reply from Defendants (Doc. 19), and a sur-reply from Plaintiff (Doc. 21).

The Court concludes that the information contained in the motion to dismiss and the responsive memoranda more thoroughly outlines the parties' competing arguments than do the objections to the Report and Recommendation. Accordingly, the Court declines to take judicial notice of Defendants' documents for purposes of the current objections, as a more thorough evaluation of the merits of Plaintiff's claims is appropriate. The pending motion to dismiss is currently referred to the Magistrate Judge.

Viewing solely within the four corners of Plaintiff's complaint, this Court concurs with the Magistrate Judge's recommendation that, upon initial *sua sponte* inspection, Plaintiff's claims against the previously named Defendants in their individual capacities may proceed, but all of Plaintiff's remaining claims fail to state a claim for which relief can be granted. Accordingly, the Report and Recommendation is **ADOPTED** in its entirety, as reflected below.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the then-pending filings in this matter. Upon consideration of the foregoing, the

Court does determine that such Report and Recommendation should be and is hereby
ADOPTED in its entirety.

Accordingly, **IT IS ORDERED** that Plaintiff's complaint (Doc. 1) is
DISMISSED with prejudice, with the exception of Plaintiff's individual capacity claims
against Defendants Juillerat, Popp, Rager, Weyand, and Riley.

IT IS SO ORDERED.

Date: 5/18/18



Timothy S. Black
United States District Judge